



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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JAN 08 2020

The Honorable Jared Polis
Office of Policy
Attn: Dan Gibbs, Executive Director Colorado Department of Natural Resources
136 State Capital
Denver, CO 80203

Dear Governor Polis:

Thank you for your letter dated September 9, 2019 regarding your consistency review of the Bureau of Land Management (BLM) Uncompahgre Field Office Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). We appreciate the State of Colorado's feedback and have given these comments careful consideration. BLM Colorado expects that the Approved RMP and Record of Decision (ROD), together with the explanations below, will address the concerns you shared.

1. Recently Enacted State Legislation

We have evaluated the concerns regarding potential inconsistencies between the foreseeable oil and gas development identified in the PRMP/FEIS and two recently enacted State legislative measures, HB19-1261 and SB19-181. The BLM will work with the State to identify ways it can support the objectives of both measures. The PRMP is designed to adapt to new State laws by providing for compliance with applicable pollution control laws, in accordance with 43 U.S.C. § 1712(c)(8). The PRMP will require compliance with applicable state and federal laws and policies, and the BLM will review and evaluate the State's plan for achieving emission reduction targets once it is complete. That evaluation will inform the BLM's implementation decisions.

The PRMP/FEIS contains an extensive analysis of air quality issues and includes management actions designed to reduce harmful emissions, such as a decision to limit degradation of air quality and related values. BLM Colorado adopted an adaptive management approach to address air quality impacts, known as the Colorado Air Resource Protection Protocol. Through this protocol, the BLM considers and applies mitigation measures, as well as best management practices in its decision-making to protect air quality. Additionally, the RMP includes a lease notice attached to new leases to inform lessees of necessary additional analysis at the drilling stage. This analysis will identify appropriate mitigation and respond to potential changes in law or policy. Public involvement is vital to the NEPA process and will continue to play a role in how the BLM manages oil and gas resources and associated infrastructure on public lands in the Uncompahgre Field Office planning area. This is a comprehensive approach designed to promote consistency with the State's pending regulations.

2. State Wildlife Plans

We have evaluated your concerns that the PRMP may not be consistent with several of Colorado's species management plans and agreements. BLM Colorado and the State have enjoyed many years of cooperation in managing wildlife resources. This cooperation continued during the development of the PRMP to ensure consistency with the State's wildlife plans and agreements, which includes a plan objective (line 97) to:

Provide for effective wildlife and fish habitat throughout the Decision Area with abundance and distribution commensurate with the capability of the land to sustain wildlife and fish populations. Habitat continuity and travel corridors exist and persist to facilitate species movement and establishment into newly suitable areas as a result of changing habitats. Consider route densities in travel management to support CPW [Colorado Parks and Wildlife] wildlife population objectives. Utilize current conservation plans, agreements, and strategies, including state habitat and species management and action plans, to direct management.

This objective addresses consistency of managing wildlife habitats on public lands with the State's wildlife plans, and the BLM determined that none of the decisions in the PRMP conflict with those plans. The BLM considered and incorporated many of the State wildlife plan's objectives more directly in the PRMP management actions. The BLM believes this action, combined with the broader objective, ensures that wildlife habitats will be managed consistent with the State's wildlife plans. This objective gives the BLM flexibility to develop appropriate implementation-stage measures in response to potential State plan updates throughout the life of the RMP. Implementation decisions such as route designations and right-of-way authorizations must conform with the plan objective. To address the State's concern about the development of infrastructure, the BLM will modify the objective above as follows:

*Consider route **and infrastructure** densities to support CPW wildlife population objectives.*

BLM Colorado has appropriately incorporated and considered the goals, objectives, and commitments of the State's wildlife plans and will continue to do so through implementation. While the PRMP/FEIS includes an objective that directs the BLM to utilize current plans, agreements, and strategies, the BLM is presently unable to include an objective that reflects plans or plan revisions that are still in development.

BLM policy encourages reliance on the State's existing plans. Many of the specific goals, objectives and commitments described in those plans apply at the implementation stage, rather than at higher-level planning. Your consistency review did not disclose any specific inconsistency where the BLM's PRMP would preclude effective implementation of the State's plans.

We reviewed CPW's 2016 comment letter on the Draft RMP and Draft EIS, and while BLM has not adopted every recommendation in that letter, the only inconsistency disclosed was that the BLM's Preferred Alternative was "not consistent with lease stipulations recommended to BLM

by CPW.” The BLM worked closely with local CPW managers to address their recommended lease stipulations in the PRMP/FEIS and incorporated many of them; however, such recommendations do not comprise an officially approved policy or program for purposes of 43 C.F.R. § 1610.3-2.

2a. Big Game Habitat and Migration Corridors

BLM Colorado determined that the PRMP decisions on big game winter range and migration corridors are consistent with Executive Order D-2019-001 and Colorado’s Action Plan for Implementing Secretarial Order 3362. The goals and objectives in the PRMP are consistent with the State’s emphasis on protecting big game winter range and migration corridors. The PRMP contains many management actions aimed at protecting and enhancing big game species habitat consistent with CPW’s population objectives, as well as timing limitations that restrict disturbance during sensitive periods. The State’s plans and policies do not specify mechanisms for achieving its population goals, and the State has not adopted restrictions or regulations specific to managing for big game habitats. Once the State does so, the BLM will consider those restrictions when making implementation decisions, as outlined in the plan objective (line 97) noted above.

Colorado’s Action Plan for Implementing Secretarial Order 3362 identifies the Uncompahgre Plateau migration corridor and the associated threats to big game within that area. However, it does not identify specific management actions required to address those threats. Similarly, Executive Order D-2019-001 highlights the need to address big game impacts and sets a July 2020 deadline for the State to identify legislation, regulations, and policy to ensure conservation of seasonal big game habitat and migration corridors. Specific measures to accomplish the State’s goals are not yet available for the BLM’s consideration.

Your consistency review letter proposes adding a Controlled Surface Use (CSU) stipulation limiting routes to one linear mile per square mile and facilities to one per square mile. The letter further asserts that habitat effectiveness cannot be maintained with disturbance in excess of these standards and that compensatory mitigation should be required where route densities exceed one mile per square mile. BLM Colorado has not incorporated this recommendation in the RMP because this standard is not established in the State’s wildlife plans.

Moreover, BLM policy (<https://www.blm.gov/policy/im-2019-018>) precludes the use of required compensatory mitigation except to comply with State requirements or other federal requirements. Under this policy, the BLM may work with CPW to consider compensatory mitigation requested by the State as part of a State plan or program. Nevertheless, the PRMP includes an objective supporting CPW’s big game population goals through consideration of route densities. Consideration at the implementation/project phase will determine if densities below or in excess of this proposed standard are locally appropriate. While the BLM has not adopted the specific recommended CSU stipulation, we look forward to continuing to work with CPW to consider route density and population objectives in our implementation decisions.

BLM Colorado is committed to continued coordination with the Department of Natural Resources and CPW to develop landscape-scale solutions to address threats to big game habitat.

In response to your request, the BLM will include a modified version of the State's proposed CSU stipulation (Enclosure 1) in the approved RMP, which will ensure that the BLM and the State coordinate around big game habitat management issues when developing mitigation measures and plans of development. This will help minimize adverse impacts to provide for healthy populations and meet the State's population objectives, allowing the BLM and the State to continue developing effective management tools that can be applied across landscapes and land ownerships.

2b. Gunnison Sage-Grouse Rangewide Conservation Plan

The PRMP/FEIS includes conservation measures for the Gunnison Sage-Grouse (GUSG) consistent with the 2006 GUSG range wide conservation plan. The PRMP/FEIS analyzes and proposes mitigation measures that avoid potential future impacts by closing public lands to certain uses or minimizing other potential future impacts by restricting certain uses on the public lands. Typically, it is not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because approving an RMP does not directly incur any on-the-ground impacts.

Several fluid leasing and surface disturbance stipulations would apply for the protection of GUSG under the PRMP/FEIS (refer to TL-16, TL-18, NSO-31/SSR-32, and CSU-29/SSR-34 in Appendix B of the UFO PRMP/EIS). The BLM would also consider all appropriate mitigation measures during the decision-making process for future site-specific actions.

Your letter does not identify how the PRMP is inconsistent with the State's plan, but recommends that the BLM "incorporate the conservation strategies cited in the State Sage-Grouse Plan." BLM Colorado has determined that our respective plans are in fact consistent. The BLM's PRMP is a broad-scale planning document and as mentioned above, articulates our objective to "[u]tilize current conservation plans, agreements, and strategies, including state habitat and species management and action plans, to direct management." However, many details in the State's plan are "Available Strategies" that can be applied as part of site-specific decisions. For this reason, they are more appropriately considered and applied during the BLM's implementation phase, rather than adopted as management actions in the RMP.

The BLM's review of the State's GUSG plan confirms that the PRMP is consistent both with its priority strategies and the specific strategies related to various land uses, based on the following considerations:

- Priority 1 - Protection of occupied habitats. The BLM has specified restrictive stipulations for fluid mineral development and other surface-disturbing activities in occupied habitats and manages them as right-of-way exclusion or avoidance areas.
- Priority 2 - Stabilization of existing populations. While the BLM focuses on managing wildlife habitat rather than populations, our partnership with CPW to protect and manage habitat will continue.
- Priority 3 - Habitat improvement. BLM Colorado's Public Land Health standards specify that "[s]pecial status, threatened and endangered species (federal and state), and other plants and animals officially designated by the BLM, and their habitats are maintained or

enhanced by sustaining healthy, native plant and animal communities.” The PRMP specifies that the BLM will “[l]imit, modify, or manage the cause, where an activity has been demonstrated to be causing land health problems, to improve land health of lands, streams, and wetlands rated as not meeting the BLM Colorado Public Land Health Standards.” The PRMP further specifies that we will “[p]ursue opportunities to enhance and restore wetland and riparian areas impacted by historic land use and flow regime modification,” and “[m]anage vegetation for a mix of productive and resilient plant and biological soil crust communities that sustain native plant and animal species.” Many of the management actions in the PRMP support ongoing efforts to improve habitat, with the remainder having a neutral effect.

- Priority 4 - Adaptive Management. Adaptive management is applied through implementation rather than high-level planning. To be effective, it requires an understanding of the success of past implementation and mitigation.
- Priority 5 - Protection of unoccupied suitable habitats. The PRMP includes management actions to protect large areas of unoccupied suitable habitats through its management of designated critical habitat and habitats as defined by CPW, as well as through the application of CSU 29/SSR 34 in GUSG Potential Habitat.

The BLM coordinated with the U.S. Fish and Wildlife Service (FWS), a cooperating agency, early in the planning process. In that role, the FWS provided input on planning issues, data collection and review, as well as alternatives development for analysis. To comply with Section 7(c) of the Endangered Species Act of 1973 (ESA), the BLM submitted a biological assessment to FWS requesting formal Section 7 consultation on the effect of the RMP on ESA-listed species and habitats. On December 17, 2018, the FWS issued the biological opinion for the preliminary PRMP/FEIS, which concluded the following:

“Implementation of the RMP, including the conservation measures and use stipulations, will reduce multiple threats to the GUSG and could restore the species to formerly occupied range. We anticipate some low level of adverse effects to GUSG, but the majority of these effects would be widely distributed across GUSG habitat in the Uncompagre Field Office and likely be of low intensity and severity.”

The biological opinion is available online at the BLM’s RMP website: <https://go.usa.gov/xnpgD>. Following publication of the PRMP/FEIS, the BLM corresponded with the FWS to confirm the changes from the preliminary Proposed plan since the FWS’s review did not alter the conclusions of the biological opinion. The PRMP/FEIS complied with the National Environmental Policy Act by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP. The BLM has complied with the consultation requirements under Section 7(a)(2) of the ESA.

The BLM continues coordinating with the State and FWS to develop strategies to promote GUSG recovery. The FWS published the *Draft Recovery Plan for the Gunnison Sage-Grouse* on November 1, 2019, which provides an overview of the species’ current status and identifies a recovery strategy with six broad priority actions. These actions include implementing regulatory mechanisms or other conservation plans or programs such as land-use management plans to reduce and ameliorate threats associated with habitat loss and degradation. The BLM will cooperate with the FWS to develop recovery implementation strategies. In coordination with

FWS, the BLM will evaluate existing management decisions to determine if current RMPs, including the final Uncompahgre RMP, would require an amendment to support the final GUSG recovery plan, expected to be completed in October 2020.

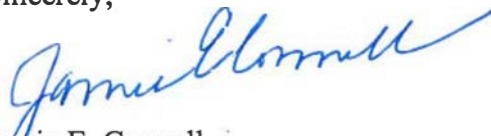
Consistent with the conservation measures identified in the FWS's biological opinion and recommendations from the State, the BLM will modify the GUSG stipulations in the PRMP to include consultation with the State on any proposed exceptions, waivers, and modifications, as well as a noise limitation requirement (See Enclosure 2). These modifications will better align with the conservation strategies identified in the State's GUSG plan.

Thank you providing your consistency review of the Uncompahgre Field Office PRMP/FEIS. The BLM believes our coordination with the State improved and strengthened this land use plan, and we are happy to have addressed your concerns. We look forward to working with you and your staff to continue making progress towards addressing these resource issues during implementation.

Please note that you have the opportunity to appeal our response to the Director of the BLM. An appeal must be submitted in writing within 30 days, as provided in 43 C.F.R § 1610.3-2.

If you have any questions, please contact BLM Colorado State Planning Lead Megan Gilbert at 303-239-3936 or the Acting BLM Colorado Communications Director at 303-239-3681.

Sincerely,



Jamie E. Connell
State Director

2 Enclosures:

Proposed CSU

Gunnison Sage Grouse Stipulation Language

Enclosure 1: Proposed CSU

Lease Number: <LEASE_NUMBER>

WILDLIFE BIG GAME WINTER, MIGRATION AND PRODUCTION AREA CSU UFO

CONTROLLED SURFACE USE

Stipulation: Surface occupancy or use may be restricted in big game winter, migration and production areas, as mapped in the Resource Management Plan, BLM's GIS database, or other maps constituting the best available information as provided by local, state, federal or tribal agencies that are accepted by the BLM.

<SPECIES>

Prior to surface disturbance within big game severe winter range/winter concentration areas, migration and production areas, BLM may require the applicant to develop a mitigation plan in coordination with BLM and CPW, in conformance with applicable state requirements, rules and regulations, as a component of the APD– Surface Use Plan of Operations. The operator shall not initiate surface-disturbing activities unless the BLM authorized officer has approved the Plan (with conditions, as appropriate). The Plan must demonstrate, to the authorized officer's satisfaction, that the overall function and suitability of big game winter ranges, migration, and production areas will not be impaired. This may include special design, construction and implementation measures, including relocation of operations by more than 200 meters (656 feet). Measures included in the plan may include, but are not limited to, limitations to surface disturbance density through efficient planning of facilities, roads and well locations; minimization of routine truck traffic associated with well/facility visits through use of remote sensing/control and pipelines to transport liquids; avoidance of visits during certain hours during the winter season; and limitations on noise.

On the following lands:

<LEGAL_DESCRIPTION>

Purpose: Ensuring the function and suitability of big game winter range, migration, and production areas.

Standard EXCEPTION, MODIFICATION, and WAIVER criteria apply.

Enclosure 2: Gunnison Sage Grouse Stipulation Language

Stipulation CSU-29 will be modified with added design feature for noise:

“Sound levels at leks, due to new project noise individually or cumulatively from anthropogenic sources, should not exceed 10 decibels (dB) above baseline sound levels at the perimeter of a lek during the breeding season (March 1 to May 15), 6 pm to 8 am. Baseline sound levels should be determined prior to project initiation. Sound level measurement and monitoring protocols will be coordinated with CPW.”

Stipulation NSO-31 will be clarified with the following language about exceptions, modifications, and waivers:

“Exceptions or modifications may be considered if, in consultation with the State of Colorado, it can be demonstrated that there is no impact on Gunnison Sage-Grouse based on one of the following:

- Topography/areas of non-habitat create an effective barrier to impacts.*
- No additional impacts would be realized above those created by existing major infrastructure (for example, a State Highway).*
- The exception or modification precludes or offsets greater potential impacts if the action were proposed on adjacent parcels (for example, due to landownership patterns).*

***In order to approve exceptions or modifications to this lease stipulation, the Authorized Officer must obtain agreement, including written justification, between the BLM District Manager and CPW that the proposed action satisfies at least one of the criteria listed above.*

Waiver: No waivers are authorized unless the area or resource mapped as possessing the attributes protected by the stipulation is determined, through collaboration with the State of Colorado, to lack those attributes or potential attributes. A 30-day public notice and comment period is required before waiver of a stipulation. Waivers would require BLM State Director approval.

This lease is subject to NSO and does not guarantee the lessee the right to occupy the surface of the lease for the purpose of producing oil and natural gas. In areas open to fluid mineral leasing with NSO stipulations, fluid mineral leasing activities are permitted, but surface-disturbing activities cannot be conducted on the surface of the land unless an exception, modification, or waiver is granted.”